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2
3 In the Matter of the Arbitration
4 -of-
5 SECURITY INSURANCE COMPANY OF HARTFORD Itself
6 and as Successor in Interest to THE FIRE AND
7 CASUALTY INSURANCE COMPANY OF CONNECTICUT and
THE CONNECTICUT INDEMNITY COMPANY.

8 Claimant,
9 -against-
10 COMMERCIAL RISK REINSURANCE COMPANY LIMITED
(BERMUDA) and COMMERCIAL RISK RE-INSURANCE
11 COMPANY (VERMONT),
(Non-DIG Arbitration) Respondents.

12 -----x
13 March 28, 2006
14 10:05 a.m.
15 Stroock & Stroock & Lavan LLP
16 180 Maiden Lane
17 New York, New York
18 ORGANIZATIONAL MEETING
19 BEFORE:
20 DAVID A. THIRKILL, Umpire
21 MARTIN D. HABER, ESQ., Arbitrator
22 THEODOR DIELMANN, Arbitrator
23
24 Reported by:
25 ANDREW WALKER, RPR (1991)

1
2
3 THE UMPIRE: Let's go on the
4 record.

5 Good morning, ladies and
6 gentlemen. This is the organizational
7 meeting of a dispute between Security
8 of Hartford Insurance Company and
9 Commercial Risk Reinsurance Company
10 Limited, and I think we've all agreed to
11 caption this as, in parentheses,
12 "Non-DIG" to distinguish it from another
13 dispute between the parties which have,
14 in effect, the same cast of characters
15 if different underlying contracts.

16 I think everybody has got a copy
17 of an agenda that was circulated and, if
18 so, we could move straight to that
19 agenda and item 1, "Disclosures."

20 The panel, if it's okay with you,
21 would like to use the same disclosures
22 as was disclosed at the previous hearing
23 on the DIG matter. The obvious only
24 update is that whereas before you had
25 not secured an umpire, in this matter

1 APPEARANCES:

2 STROOCK & STROOCK & LAVAN LLP
3 Attorneys for Claimant
4 180 Maiden Lane
5 New York, New York 10038-4982
6
7 BY: MICHELLE L. JACOBSON, ESQ.
8 ANDREW LEWNER, ESQ.
9
10 D'AMATO & LYNCH
11 Attorneys for Respondents
12 70 Pine Street
13 New York, New York 10270
14
15 BY: JOHN P. HIGGINS, ESQ.

16 ALSO PRESENT:

17 JAMES F. MEEHAN, ESQ.
18 Vice President and General Counsel
19 Royal & SunAlliance USA
20
21 ANDRE LEFEBVRE
22 Financial Risk Officer
23 Royal & SunAlliance USA
24
25 JOELLE de LACROIX
CRP

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2 obviously now you have, and it's me. I
3 have no additional disclosures to that.

4 If none of the other panelists
5 do -

6 MR. HABER: I have no further
7 disclosures.

8 MR. DIELMANN: No, none either.

9 THE UMPIRE: Would that be
10 acceptable to the parties?

11 MS. JACOBSON: Yes, that's
12 acceptable.

13 MR. HIGGINS: Yes.

14 THE UMPIRE: So I thus assume
15 there's no questions of the panel in
16 relation to those disclosures. And
17 would, therefore, ask you to formally
18 accept the panel as it is.

19 MS. JACOBSON: We accept the panel
20 on behalf of the claimant.

21 MR. HIGGINS: We do on behalf of
22 respondent.

23 THE UMPIRE: May I take this
24 opportunity, I understand that there's
25 been some family situation with Mr. --

	5		7
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2	Bob Lewin, and the panel would like to	2	arbitration, in reality it's really
3	pass on condolences to him in that	3	three separate programs, NHE, ORS and
4	regard.	4	HPP, that are all governed by separate
5	MS. JACOBSON: I will pass those	5	reinsurance contracts. Commercial Risk
6	along, thank you.	6	has failed to make payments under three
7	THE UMPIRE: I think we had a hold	7	separate reinsurance agreements which
8	harmless at the last hearing.	8	covered business written by three
9	Presumably somebody's prepared one on a	9	program managers with three separate
10	similar basis.	10	sets of facts. What's notable, really,
11	MS. JACOBSON: We have.	11	about Commercial Risk's position
12	MR. LEWNER: Yes.	12	statement is what it doesn't say.
13	THE UMPIRE: Go off the record for	13	Although paying lip service to the
14	a second.	14	notion that it's going to satisfy its
15	(Pause in the proceedings)	15	obligations under the reinsurance
16	THE UMPIRE: Back on the record.	16	agreements, it hasn't done that.
17	Just for the record, during the	17	Despite the fact that Commercial
18	break the parties signed – the parties	18	Risk has been in and audited, it does
19	and the panel signed both the hold	19	not share the audit with the panel or
20	harmless and a confidentiality	20	with the claimant. What's plain is that
21	agreement.	21	Commercial Risk really doesn't have a
22	Before we go on to brief	22	position, they only intend to use this
23	statements, what we'd like to do is to	23	arbitration proceeding as a means to go
24	go through this organizational meeting	24	fish.
25	and then adjourn that and then stay on	25	We will show that Commercial Risk,

	6		8
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2	the record for some questions in	2	contrary to their position statement,
3	relation to the security issue, and then	3	was very involved in these three
4	we'll go off that record and the panel	4	programs, and that their underwriter
5	will meet, and, if necessary, discuss	5	participated in joint audits with
6	security related to both matters since	6	Security of Hartford. Commercial Risk
7	from a principle viewpoint we believe	7	was in large measure the risk bearer and
8	that the issues are the same.	8	took that role very seriously. If
9	That's what we'd like to do if	9	anyone is an ostrich—and I've taken
10	that's okay with you.	10	that from their position
11	MS. JACOBSON: That's fine.	11	statement—that's Commercial Risk now
12	MR. HIGGINS: That's fine with us.	12	and not Commercial Risk at the time.
13	THE UMPIRE: Thank you.	13	These reinsurance agreements were all
14	So if we move on, obviously – and	14	terminated or expired by June 30th of
15	thank you, the panel would like to thank	15	'02 and if, in fact, there were
16	the parties for the position statements	16	problems, why does it take so long for
17	received, I think they were very clear,	17	them to complain?
18	as were the exhibits. If you'd like to	18	We've asked for prehearing
19	add anything to it, you should go ahead.	19	collateral. I don't know if the panel
20	MS. JACOBSON: Okay.	20	would like me to address that now, but
21	At the outset – I would like to	21	as set forth in our papers we are
22	thank the panel for hearing this matter.	22	seeking security in connection with this
23	At the outset, I want to make	23	proceeding.
24	clear that although we've been referring	24	THE UMPIRE: Unless my
25	to this arbitration as the non-DIG	25	co-panelists have another decision, if

	9		11
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2	you're talking in a principle sense,	2	In terms of the contractual right
3	keep going; if you want to get into	3	to security, I think we can get into the
4	details, why don't you leave that to the	4	details of it later. The only statement
5	post-organizational meeting discussion I	5	we made in support of it at this stage
6	referred to earlier.	6	by Security is--I think there are too
7	MS. JACOBSON: Okay. Well, in	7	many "securitys" here, but by
8	essence, our contention is that under	8	Security--is the contractual obligation.
9	the reinsurance contracts, each	9	They, in fact, made three arguments; I
10	reinsurance contract, there is a	10	don't know whether you want me to deal
11	provision for security that is	11	with those at this stage as a matter of
12	unconditional, it's not conditioned on	12	principle. I'm happy to if that's the
13	there not being any disputes. So	13	panel's wish.
14	irrespective of whether or not we are in	14	THE UMPIRE: Go ahead.
15	an arbitration proceeding, Commercial	15	MR. HIGGINS: To begin with,
16	Risk is required to post that as a	16	they've cited Section 13 -- was it?
17	contractual matter. We are seeking that	17	MS. JACOBSON: 1213.
18	security now, we're calling it	18	MR. HIGGINS: -- 1213 of the
19	prehearing security but, in essence,	19	New York Insurance Law. This has never
20	it's a contractual right which is	20	been used by an arbitration panel. It
21	unconditional, and if the panel would	21	is clear as to why it's never been used
22	like, I can set aside the numbers	22	by an arbitration panel because it only
23	discussion for later on.	23	applies to court proceedings. All the
24	THE UMPIRE: Please.	24	cases cited are court proceedings,
25	MS. JACOBSON: Thank you.	25	there's no case that's been cited where
	10		12
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2	THE UMPIRE: Thank you.	2	the arbitration panel ordered the
3	MR. HIGGINS: We also would like	3	security under 1213 and then the court
4	to thank the panel for attention.	4	approved the arbitrators' act.
5	We agree there are three separate	5	They're all cases where there was
6	contracts, three separate contractual	6	a court proceeding, whether it's a
7	agreements, but we take serious issue	7	confirmation of an arbitration award or
8	with an implication that we're fishing	8	a motion to compel arbitration, but
9	here. We did take a limited audit, and	9	there, in every case, is a court
10	that limited audit disclosed several	10	proceeding and the judge orders the
11	irregularities, to put it mildly, in the	11	security to be put up. There's no
12	underwriting. And those, although there	12	connection there. And that is a
13	isn't a formal report of this	13	clear -- clearly stated in Section 1213
14	arbitration, we did share the	14	because it refers to the proceeding in
15	conclusions in broad terms. As a matter	15	which the court or the court where the
16	of fact, a lot of it has to do with	16	proceeding is pending, so you don't have
17	referrals and that sort of thing, and a	17	an arbitration pending before a court,
18	statement was made by RSA that those	18	you may have aspects of it but not the
19	referral documents and all the issues	19	arbitration before the court.
20	relating to the referral question would	20	Secondly, it's clear that the
21	be delivered to us last year, and we're	21	monies are to be paid into the clerk of
22	still waiting for them. So to suggest	22	the court, and that would only apply to
23	that we're fishing is, I think, not	23	a court proceeding, not to an
24	correct, and shouldn't be given any	24	arbitration proceeding. So it's clear
25	weight by the panel.	25	that -- and there's no support for this,

	13		15
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2	it's clear that that section is utterly	2	wouldn't alter the fact, but the judge
3	irrelevant to this proceeding.	3	here ordered the security. It hadn't
4	THE UMPIRE: Hold a second.	4	been, it hadn't been -- the order hadn't
5	(Discussion off the record)	5	been issued by an arbitration panel so
6	THE UMPIRE: I think it would	6	we don't have a situation where the
7	probably be efficient if we ask	7	arbitration panel ordered it under 1213,
8	questions as we go along, if that's okay	8	so that -- well, number one, that issue
9	with the panel.	9	would be dicta, but number two --
10	MR. HIGGINS: That's fine.	10	MR. HABER: Yeah?
11	MR. HABER: Would you mind looking	11	MR. HIGGINS: -- number two, this
12	at Exhibit B of Security's reply brief,	12	is an underlying procedure, proceeding,
13	please.	13	this arbitration. And as I said, there
14	MS. JACOBSON: It's also in our --	14	are cases where you had a confirmation
15	MR. HIGGINS: The new one?	15	proceeding in court and before the court
16	MR. LEWNER: Yes.	16	would allow a response to the
17	MR. HABER: The case is American	17	confirmation proceeding, the court
18	Centennial versus Seguros la Republica.	18	ordered that this security be put up
19	MR. HIGGINS: That's it.	19	under 1213, and there have been cases
20	And what's the question?	20	where there's a motion to compel
21	MR. HABER: Well, I'm looking --	21	arbitration, there's very few cases, but
22	your position, if I understand it	22	motion to compel arbitration where the
23	correctly, is 1213 does not apply to	23	court ordered the security to be put up
24	arbitrations.	24	before it would allow the respondent to
25	MR. HIGGINS: Right.	25	put in a response or an answer.
	14		16
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2	MR. HABER: Second column of the	2	pleading, which is what this refers to,
3	first page of that says, and I'm reading	3	in the court.
4	in the second full paragraph, second to	4	MR. HABER: Okay. Could you now
5	the last sentence, "The contention that	5	go to Exhibit C, which is the next case,
6	the legislature did not intend 1213 to	6	which is Northwestern National v. Kansa
7	apply to reinsurance must be rejected.	7	and I'm looking at the third page, first
8	In addition, the language of the statute	8	column under "Request for Bond," and
9	is clear that it applies broadly to any	9	this is the bond that Kansa is supposed
10	proceeding, including an arbitration	10	to post to security and the last two
11	proceeding. Accordingly, based on our,"	11	sentences say, "Accordingly, the parties
12	and then there's another citation to	12	are instructed to meet and attempt to
13	1213(c)(1)," "Accordingly, based on our	13	resolve the amount of the bond to be
14	review of this issue, we find no error	14	posted by Kansa. If the parties are
15	in the magistrate judge's recommendation	15	unable to reach agreement within two
16	and, therefore adopt, that	16	weeks from the date of this order, the
17	recommendation in full."	17	arbitration panel will then resolve the
18	Please explain how this case is	18	issue."
19	distinguished and supports your position	19	How does that support your
20	that 1213 doesn't apply to arbitration.	20	position?
21	MR. HIGGINS: Well, it does	21	MR. HIGGINS: Well, not the issue
22	broadly, as this says, apply to	22	of whether there'd be security, just the
23	arbitrations in the sense that once it	23	amount. So the court is ordering the
24	gets to court, just the fact that an	24	security under Section 1213, it isn't
25	underlying procedure is arbitration	25	assigning that job to the panel, which

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 2 is what is being suggested by the
 3 claimant.
 4 MR. HABER: Are you --
 5 MR. HIGGINS: All that the court
 6 is assigning to the parties for
 7 agreement or in default to the panel, is
 8 the amount of the security.

9 MR. HABER: I'm trying to
 10 understand, so your argument is that it
 11 is only a judge who may order the
 12 posting of security, not this panel?

13 MR. HIGGINS: Yes.

14 MR. HABER: And your authority for
 15 that position -- do you have affirmative
 16 authority or are you just saying you
 17 disagree with any reading of the cases
 18 other than your interpretation?

19 MR. HIGGINS: Well, I don't think
 20 there is a disagreement with my
 21 interpretation in terms of who ordered
 22 the security. Now, there are --

23 MR. HABER: I'm going to go out --
 24 your opposing counsel I think is.

25 MR. HIGGINS: That there's

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 2 MR. HIGGINS: We don't contest
 3 that.
 4 THE UMPIRE: Thank you.
 5 MR. HIGGINS: There are three
 6 grounds here, that's one of them.

7 The second ground is the ground
 8 that there's a contractual obligation,
 9 and that was dealt with briefly by
 10 Ms. Jacobson. There's a number of
 11 arguments against that. The primary
 12 argument is that that's final relief,
 13 and until we have -- until we have a
 14 hearing here, the panel shouldn't be in
 15 the business of enforcing one provision
 16 of the contract and refusing to enforce
 17 the other provisions of the contract.
 18 We say it's equally clear that these
 19 contracts only cover business which is
 20 written in accordance with the
 21 underwriting guidelines.

22 Now, we have to prove that and
 23 we'd like an opportunity to prove that,
 24 but to say that one provision is clear
 25 and, you know, object to the other

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 2 security, that there's authority for an
 3 arbitration panel ordering security?
 4 MR. HABER: You don't think
 5 they've taken that position?
 6 MR. HIGGINS: They have taken that
 7 position, there's no authority for it.
 8 And I don't think you can read these
 9 cases as a matter of fact to interpret
 10 them that the panel issued the 1213
 11 order and not a court. In every case,
 12 the court ordered the 1213.

13 MR. HABER: Okay.

14 MR. HIGGINS: And there is no
 15 authority going the other way, simply
 16 because the statute is clear.

17 MR. HABER: Okay.

18 THE UMPIRE: Let me see if I can
 19 clarify that for my own mind.

20 It's your position that an
 21 arbitration panel, per 1213, does not
 22 have authority?

23 MR. HIGGINS: Exactly.

24 THE UMPIRE: Not an arbitration
 25 panel doesn't have authority per se?

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 2 provision is splitting the contract, and
 3 that's final relief. If we are ordered
 4 to put up security at the end of the
 5 case because the panel has determined
 6 that it's part of the relief that
 7 security should be granted, then that's
 8 what we'll deal with at the time and
 9 that's when we'll put up -- we're happy
 10 to put up the security at that time. We
 11 don't think that at this stage we should
 12 be looking at one aspect of the contract
 13 and not at the other aspect.

14 Secondly, the clause only applies
 15 to situations where credit for
 16 reinsurance is a problem. And there are
 17 a number of reasons why we shouldn't be
 18 thinking about prehearing security,
 19 which presumably would be under the
 20 control of the panel, as solving that
 21 problem. There's no contractual
 22 requirement that we put up security that
 23 is in the possession -- or under the
 24 control of the panel, for the simple
 25 reason that it wouldn't solve the credit

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 2 for reinsurance problem because if it's
 3 not unconditional, then the state won't
 4 accept it, it's got to be utterly
 5 unconditional. So if the panel decides
 6 that security is there and it can only
 7 be paid over if the judgment provides
 8 for that, which is the standard forms
 9 for security under the ARIAS forms, then
 10 that does Security no good.

11 Secondly, on that point, we don't
 12 believe that there is an obligation
 13 under the contract to provide security
 14 for the amount that's being sought.
 15 Number one, we question the number,
 16 because we question our obligation in
 17 light of the defenses that we have
 18 raised.

19 Secondly, we question the number
 20 based on the security that -- based on
 21 the amount of letters of credit that
 22 Security is showing on its Schedule F.
 23 There is no penalty for this contract,
 24 so if there's no penalty, then there's
 25 no right to claim a right under the

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 2 overpayment of premium, it's just not
 3 covered by the treaty. And I think if
 4 you push it all out and give us a credit
 5 for the \$4 million letter of credit, I'm
 6 not sure that we owe them anything, even
 7 under their interpretation.

8 The last argument that's made, and
 9 we think it's libelous, is that
 10 Commercial Risk doesn't have the
 11 wherewithal to satisfy a \$6 million
 12 letter of credit. We think it's just
 13 outrageous for a company like RSA to
 14 make against Commercial Risk and
 15 ultimately SCOR, to question the ability
 16 of SCOR to satisfy a judgment. We trust
 17 that that's an argument that's -- an
 18 advocate, a lawyer would put forward and
 19 not RSA, but it's kind of a sad
 20 commentary when that sort of
 21 bloody-minded attitude is put forth in
 22 an arbitration. We have this much
 23 security in these two big companies
 24 going at each other for a paltry
 25 \$6 million, it's just, we think,

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 2 contract for a letter of credit which
 3 would cure the penalty. The fact that a
 4 parent put up letters of credit we would
 5 suggest is not a proper way to secure
 6 under Schedule F. So the fact that they
 7 have chosen to do this, and it cures
 8 their problem, is not something that we
 9 brought along. The problem is cured?
 10 So be it.

11 The last item -- well, and also,
 12 sorry, just to go back to that item, if
 13 you look at the amounts claimed on the
 14 schedule, number one, they keep
 15 changing, and, number two, the schedule
 16 is not understandable in terms of what
 17 the security should be. It deals with
 18 various items, premium items, claim
 19 items, and, you know, there are negative
 20 items on the funds held, there are
 21 positive items on the amount of the
 22 losses, Schedule F only deals with
 23 losses, so we shouldn't -- you know, we
 24 shouldn't be obligated to secure things
 25 like return premium or, as they put it,

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 2 outrageous.

3 Question was made as to whether a
 4 an award would be enforceable in France.
 5 That's unsupported by the claimant under
 6 French law. I'm not an expert on French
 7 law but I do know that France is a
 8 signatory of the U.N. Convention for the
 9 Enforcement of Foreign Arbitration
 10 Awards, so, number one, there wouldn't
 11 be any problem going to France and
 12 getting it upheld and getting an order
 13 confirming the award. As it wouldn't be
 14 in this country if we had an arbitration
 15 award in France. There's an assumption
 16 that civilized countries should
 17 recognize their judgments and also
 18 should recognize their arbitration
 19 awards. So we think that that is also a
 20 fairly outrageous statement to make on
 21 that issue.

22 And I think I had another point.

23 Also, a point was made that
 24 there's a case that's been filed in, I
 25 think Supreme Court New York, for an

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 2 additional 55 million.
 3 MR. LEWNER: 49.
 4 MS. JACOBSON: 48.
 5 MR. HIGGINS: 48, sorry.
 6 That's -- you know, I think that's
 7 utterly improper for anyone to suggest
 8 that that has any relevance here.
 9 Number one, it's not SCOR France, the
 10 parent company, it's SCOR U.S.
 11 Secondly, I think what's being
 12 asked is for the panel to not only judge
 13 this case but to judge that case as to
 14 whether there's any merit to that claim
 15 either. We don't know what it's about.
 16 I mean they claim they stopped paying
 17 losses but, you know, who knows what
 18 that dispute is about. It's in court,
 19 it's not an arbitration, and the panel
 20 here really has no ability to analyze
 21 it, to figure out whether it has any
 22 application here or whether it affects
 23 the ability of the parent company or
 24 could affect the ability of the parent
 25 company to satisfy this judgment which

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 2 about security because we are going to
 3 talk about security relative to both
 4 contracts.
 5 MS. JACOBSON: Okay, well, Mr. --
 6 THE UMPIRE: I don't think that's
 7 too much of a problem at the moment but
 8 please go ahead.
 9 MS. JACOBSON: Okay.
 10 First of all, with respect to
 11 Mr. Higgins' attempt to parse the cases
 12 with respect to Section 1213, that it
 13 was ordered by the court and not the
 14 arbitration panel, I thoroughly disagree
 15 with that, we've only cited two cases,
 16 there are more cases.
 17 If you turn to the actual statute
 18 that we've appended to our reply brief
 19 with respect to the DIG motion, you will
 20 see that, we turn to Exhibit A, page 16
 21 of 19, see under "Bond or Deposit" in
 22 general there is a series of cases which
 23 deal with Section 1213, the first of
 24 which is dealing with an arbitration
 25 panel's interim order for prejudgment

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 2 in this case is going to be, if they get
 3 everything they want, \$6 million, maybe
 4 plus some interest. So that's the
 5 arguments we have on the security issue.
 6 THE UMPIRE: Thanks.
 7 Any more questions of John
 8 before -- Michelle?
 9 MS. JACOBSON: I believe that
 10 Mr. Higgins has actually combined the
 11 two security motions because a lot of
 12 the references were actually to DIG and
 13 I believe that we were here to discuss
 14 the non-DIG programs, NHE, ORS and HPP.
 15 However --
 16 MR. HIGGINS: I was mistaken, I
 17 thought we were discussing -- we were
 18 still in the organizational meeting when
 19 we were discussing security.
 20 THE UMPIRE: Yes, we're still in
 21 the organizational meeting.
 22 MS. JACOBSON: Right.
 23 THE UMPIRE: I understand that
 24 there are perhaps some grayish and
 25 blurry lines here when we're talking

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 2 security.
 3 THE UMPIRE: Hold on, just a
 4 second.
 5 MS. JACOBSON: That's the thin
 6 one.
 7 THE UMPIRE: It's actually page 15
 8 but at the top --
 9 MS. JACOBSON: Page 15 but it does
 10 say page 16 of 19 at the top.
 11 THE UMPIRE: Okay.
 12 MS. JACOBSON: If you look to the
 13 very first entry, there it is dealing
 14 with an arbitration panel's interim
 15 order, it was obviously being reviewed
 16 by the court on prejudgment security.
 17 So I think it is clear that 1213
 18 does, in fact, apply to proceedings,
 19 it's not limited to litigations, but in
 20 any event, if I heard Mr. Higgins
 21 correctly, he does not debate that the
 22 panel has the inherent authority to
 23 issue such awards, even if one were to
 24 credit his argument under Section 1213.
 25 Mr. Higgins' statement -- I'd like

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 2 to respond to Mr. Higgins' statements
 3 with respect to the contractual
 4 provision. He's indicated that, in
 5 essence, we're seeking final relief. I
 6 mean that's not the case at all. In
 7 both of our arbitration proceedings,
 8 we're -- certainly we were entitled
 9 under these provisions to completely
 10 draw down on whatever we had, and we
 11 haven't done so. We believe, however,
 12 that these amounts should be set aside
 13 in escrow, it's not akin to final
 14 relief, and we would -- we assert that
 15 the contract is clear that it does not
 16 limit itself to matters not in dispute;
 17 therefore, to the extent that we have
 18 reserved and we have paid losses, and
 19 that there is IBNR that we have set
 20 aside, then they should post those sums
 21 in an escrow amount per the terms of the
 22 contract.

23 Mr. Higgins has discussed the
 24 Schedule F. I think, frankly, that it's
 25 shocking that Commercial Risk did not

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 2 award here, and they said that they feel
 3 it libelous. Well, to the extent that
 4 we know that Commercial Risk has frankly
 5 ceased paying on many millions of
 6 dollars worth of obligations, we have a
 7 problem with that. We don't think it's
 8 libelous to assert that maybe that they
 9 won't pay; their financial statements
 10 show otherwise. They are relying
 11 wholeheartedly on this guarantee that
 12 has been posted by SCOR? Well, you
 13 know, if you take a look at that
 14 guarantee, it's addressed to whom it may
 15 concern; that's not a contract that
 16 anyone can rely on, to whom it may
 17 concern.

18 And I would also indicate that if
 19 you look at that SCOR guarantee, one of
 20 them is dated July of '99. That's the
 21 date of the first DIG contract that we
 22 have. That parental guarantee is not
 23 slapped on to the back of the
 24 reinsurance contract, it is not our --
 25 our reinsurance contract is with

30

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 2 inform the panel that, indeed, it had
 3 not posted the \$29 million which appears
 4 under LOCs. They know they haven't
 5 posted that amount. In fact, there is
 6 10.3 million that was as a result of
 7 Royal's parent's LOC and to the extent
 8 that Commercial Risk has contended that
 9 in some regard that's improper, the
 10 Delaware Insurance Department, which is
 11 Royal Indemnity's domicile, has blessed
 12 this very use of the parental LOC. It's
 13 contained in the notes of the annual
 14 statement of Royal Indemnity. So there
 15 is nothing wrong with it.

16 However, they should not be
 17 entitled to take credit for the parental
 18 LOC that's out there. Their statement
 19 that we solved the problem so that,
 20 therefore, they don't have to abide
 21 under their contractual obligations is
 22 frankly -- I find it absurd.

23 Now, they express shock and dismay
 24 over the fact that we said that they may
 25 not have the wherewithal to satisfy any

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1 Proceedings - 3/28/06
 2 Commercial Risk, it's signed by
 3 Commercial Risk and it's Commercial Risk
 4 that we should look to to enforce any
 5 obligations under the reinsurance
 6 contract.

7 We, with all due respect, should
 8 not have to go off to France to litigate
 9 against the parent on a guarantee which
 10 is certainly -- I'm not even sure if
 11 it's a legal obligation under U.S. law
 12 or French law.

13 And, certainly, I don't think that
 14 Security Insurance Company of Hartford
 15 should have to engage in ancillary
 16 litigation in France to enforce
 17 something here and that certainly
 18 collateral should be posted.

19 MR. DIELMANN: I have a question.
 20 Mr. Higgins said -- stated that there
 21 are -- France is a signatory of the U.N.
 22 agreement for enforcing arbitration
 23 awards. Is this, indeed, correct, that
 24 you have to go to France if the panel,
 25 you know, gives you relief or can that

	33		35
1	Proceedings - 3/28/06	1	Proceedings - 3/28/06
2	award be enforced in this country?	2	something which is illusory.
3	MS. JACOBSON: Well, SCOR, the	3	MR. HABER: Well, not --
4	parent, is not a party to this	4	MR. HIGGINS: To whom it may
5	arbitration. So if this panel -- this	5	concern is the world. It was sent to
6	panel would have to somehow suck SCOR,	6	RSA, it was sent to all the cedents.
7	the parent, into this arbitration on an	7	MS. JACOBSON: With all due
8	alter ego theory.	8	respect, no one in our organization
9	MR. DIELMANN: But is that not	9	recalls having been brought -- provided
10	then a formality to have it confirmed in	10	with that.
11	France? I mean what you are implying it	11	THE UMPIRE: I tell you what,
12	seems to me that you basically have to	12	let's move on, I'm happy with
13	struggle to get it enforced in France	13	understanding where I think we are.
14	but if SCOR is a signatory, then surely	14	MR. DIELMANN: I haven't really
15	the subsidiary -- you would have to just	15	understood what your suggestion, Marty,
16	to get it confirmed or do I understand	16	was.
17	this incorrectly?	17	MR. HABER: Well, my suggestion is
18	MS. JACOBSON: No, I believe, with	18	this, under American laws with regard to
19	all due respect, I think you have it	19	personal jurisdiction, because SCOR, the
20	incorrectly. I mean here SCOR is not a	20	parent, is not a party here, they are
21	party to this arbitration; they would	21	not bound by anything legal.
22	not -- there would not be an award	22	MR. DIELMANN: Okay.
23	entered against SCOR in this arbitration	23	MR. HABER: They have signed a
24	unless they're brought in as a party.	24	judgment, they have signed an
25	Therefore, there would be no award to	25	arbitration treaty, if you will, that
	34		36
1	Proceedings - 3/28/06	1	Proceedings - 3/28/06
2	enforce here or overseas against SCOR.	2	says in the event they lose an
3	We would have to have an award against	3	arbitration in the United States and a
4	Commercial Risk. If Commercial Risk	4	judgment is against the parent --
5	wouldn't pay, then we would be stuck	5	MR. DIELMANN: Right.
6	with that parental guarantee and have to	6	MR. HABER: -- that judgment may
7	chase SCOR somewhere, either by	7	be enforced in France, not a judgment
8	commencing arbitration against SCOR	8	against their subsidiary.
9	somewhere or by litigating against SCOR	9	MR. DIELMANN: Right.
10	somewhere. That's the fear.	10	MR. HABER: So your question, in
11	MR. HABER: Theo, isn't there a	11	order to respond to your question
12	simple solution. If SCOR voluntarily	12	completely, they would have to be
13	wishes to submit to the jurisdiction of	13	subject to the jurisdiction of this
14	this arbitration panel and be bound by	14	panel and they are not.
15	U.S. law and be subject to any judgment,	15	MR. DIELMANN: Okay.
16	wouldn't that solve the problem?	16	MR. HABER: I mean no one here is
17	MR. HIGGINS: That's something	17	claiming that SCOR, the parent, is part
18	that may well happen but I don't have	18	of this case.
19	the authority, sitting here, to respond	19	MR. HIGGINS: No, we're not, but
20	to that, but I'm certainly willing to	20	it's certainly not clear that anyone
21	respond to it in the next day or so.	21	would have to go to France. SCOR's
22	THE UMPIRE: Let me make sure I	22	doing business everywhere including
23	understand this, maybe I can --	23	here.
24	MR. HIGGINS: I can assure you	24	THE UMPIRE: Let me say something
25	that we didn't put that guarantee out as	25	here for a second. As far as I

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 2 understand it from following
 3 Mr. Dielmann's question--I'll leave
 4 Mr. Haber's question out of it for the
 5 moment--in the event that this panel
 6 found in favor of Security of Hartford,
 7 that would be against Commercial Risk's
 8 both Bermuda and Vermont --

9 MS. JACOBSON: That's right.

10 THE UMPIRE: -- where relevant.

11 If those companies -- and if there
 12 were no security, with a small "S,"
 13 posted, Security of Hartford would look
 14 to Commercial Risk for satisfaction of
 15 that award. In the event that
 16 Commercial Risk failed to satisfy the
 17 award, for whatever reason, it's
 18 possible that Security could look to the
 19 guarantee from SCOR as relief. In order
 20 to satisfy that, it would need to write
 21 to SCOR and say kindly pay us X amount
 22 of dollars. If SCOR said, yes, end of
 23 problem; if SCOR said no, however, then
 24 I would imagine that Security of
 25 Hartford would need to file litigation

1 Proceedings - 3/28/06
 2 won't be enough assets. You have to get
 3 into the reserving of the company.

4 THE UMPIRE: In the event that
 5 Commercial Risk paid the award that the
 6 panel had given, it will be end of
 7 story.

8 MR. HIGGINS: Yes.

9 THE UMPIRE: In the event that it
 10 did not pay, for whatever reason,
 11 whether it could, didn't want to or
 12 couldn't because it was bust, makes no
 13 difference.

14 MR. HIGGINS: I'm sorry, it does
 15 make a difference on the first thing
 16 that you said, because you can enforce
 17 it against the company if they have the
 18 funds. It's entitled to be entered in a
 19 court and then enforced, entered as a
 20 judgment and then enforced if they don't
 21 want to pay. Now, if they're belly up,
 22 then that would trigger what you're --

23 THE UMPIRE: Well, couldn't
 24 Security pursue both angles --

25 MR. HIGGINS: Sure.

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40

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 2 against SCOR, presumably in France,
 3 under the terms of that guarantee.
 4 Whether in France or the U.S., it would
 5 need to file litigation, I'm just
 6 assuming, but what I'm saying, it in
 7 France; I would need to fight that
 8 litigation in order to secure the award.

9 Is that a clear understanding of
 10 that issue?

11 MS. JACOBSON: That is correct.

12 THE UMPIRE: As far as Mr. Haber's
 13 question --

14 MR. HIGGINS: Well, could I
 15 just --

16 THE UMPIRE: Go ahead.

17 MR. HIGGINS: One caveat to what
 18 you just said. In the first instance,
 19 it would be up to Security -- or, I'm
 20 sorry, Commercial Risk to determine
 21 whether they even satisfied the
 22 judgment. I mean this is something that
 23 only applies if there isn't enough
 24 assets, and there's been no proof that
 25 there isn't enough assets or that there

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2 THE UMPIRE: -- at the point in
 3 time, i.e., pursue Commercial Risk,
 4 let's assume that it's not in litigation
 5 or even if it is, it's against the
 6 receiver, and under the parental
 7 guarantee, the guarantee I don't think
 8 mentions the liquidation scenario, it's
 9 just a blanket guarantee, what it's
 10 worth is something else, I don't want to
 11 get into that issue, but as a matter of
 12 law, I think Security could pursue both
 13 if they so choose?

14 MR. HIGGINS: If they believe that
 15 it's clear that Commercial Risk can't
 16 satisfy it, then they would be -- they
 17 would be free to, you know, to litigate
 18 under the guarantee and then pursue
 19 rights against Security presumably at
 20 the same time by filing a liquidation
 21 proceeding or however. But the
 22 guarantee is a standby, so, first,
 23 they'd have to pursue Security, which is
 24 normal, and if Security has sufficient
 25 funds --

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1	Proceedings - 3/28/06	1	Proceedings - 3/28/06
2	THE UMPIRE: You mean Commercial	2	guarantee is questionable. It may be
3	Risk?	3	perfectly valid under French law, I'm
4	MR. HIGGINS: I'm sorry, they have	4	not suggesting it's not, but there's
5	to pursue Commercial Risk, and if	5	clearly no proof before the panel that
6	Commercial Risk has sufficient funds,	6	it is.
7	then they'd be obligated to pay them.	7	MR. HIGGINS: Well, that's just
8	THE UMPIRE: Thank you.	8	one of them. The other one names both
9	As far as Mr. Haber's question is	9	companies.
10	concerned, I would prefer that we didn't	10	MR. DIELMANN: May I just, you
11	raise the issue of bringing in any	11	know, just taking on what Mr. Haber
12	parties yet until we've gone down	12	said, I mean, well, where is the
13	through stage one. I think that's a	13	problem -- to clarify this, even to take
14	little premature and I'd like to have	14	out the remotest possibility that SCOR
15	panel discussion on that first which we	15	doesn't stand behind their subsidiary,
16	could -- I think that's --	16	is that, you know, that there is a, a
17	MR. HABER: That's perfectly fine	17	specific guarantee, referring to the two
18	but I think when we deal with the	18	treties and, if need be, to this
19	guarantee, and we're assuming facts not	19	particular or the two arbitrations that
20	in evidence, because it's not clear	20	are currently pending, I mean I do not
21	under American law that this is a valid	21	know whether that is too specific but
22	guarantee, it might be under French law,	22	surely I would say it would take away
23	but we do not have an opinion of French	23	even the doubts that obviously in the
24	counsel that this is any sort of	24	claimant's mind that there may be a risk
25	enforceable guarantee because the first	25	that SCOR or Commercial Risk will
	42		44
1	Proceedings - 3/28/06	1	Proceedings - 3/28/06
2	sentence says that "SCOR guarantees that	2	talk -- walk away from any award being
3	Commercial Risk Reinsurance Company,"	3	given by the panel?
4	without determining which company,	4	MR. HIGGINS: That is one thing I
5	"shall perform its claims obligations	5	indicated earlier we'd discuss -- what
6	when due." If I understand this case,	6	you're suggesting is make it specific to
7	there are two Commercial Risk	7	these contracts --
8	reinsurance companies, correct?	8	MR. DIELMANN: Yeah.
9	MR. HIGGINS: Yes.	9	MR. HIGGINS: -- and have SCOR,
10	MR. HABER: Which one does this	10	the parent --
11	guarantee apply to?	11	MR. DIELMANN: Right.
12	MR. HIGGINS: Both of them.	12	MR. HIGGINS: -- state that the
13	MR. HABER: It doesn't say that,	13	guarantee covers that specifically.
14	they're two separate legal entities, you	14	MR. DIELMANN: Exactly.
15	have not specifically identified -- I	15	MR. HABER: But there's something
16	don't mean you personally, John, I don't	16	else, the language in the guarantee says
17	mean it that way, but SCOR has not	17	that there's a guarantee that they shall
18	specifically identified the party whose	18	perform its payment obligations when
19	obligations it is guaranteeing. In	19	due. This is a judgment in an
20	America, under the rules of strictissimi	20	arbitration we're looking to be
21	juris that voids this to begin with	21	guaranteed, not the performance of a
22	because you don't have a party whose	22	claims obligation when due, because in
23	actual performance is guaranteed without	23	theory, and only in theory, if this
24	having the party completely identified	24	panel ruled in favor of Security of
25	and here the party isn't. I think the	25	Hartford, we would be ruling that a

	45		47
1	Proceedings - 3/28/06	1	Proceedings - 3/28/06
2	claims obligation -- a claims demand	2	document that says, "Without offset
3	made X months ago or X years ago,	3	defense or counterclaim, we guarantee
4	whenever it was made, was due when made	4	the full payment and performance of all
5	and wasn't paid.	5	debts owed under the two contracts."
6	This guarantee is unclear in a	6	I'm not saying you agree to that
7	literal sense as to all of Commercial	7	language, I'm not suggesting that; all
8	Risk's obligations. It's only talking	8	I'm saying is you could draft a document
9	about claims obligations when due. It	9	that was a lot tighter.
10	could mean there's judgment--I'm not	10	MR. HIGGINS: Yes, and that's what
11	suggesting it doesn't--but it's -- at	11	I'm going to discuss with the client.
12	this point in time the language is so	12	MS. JACOBSON: And I have a
13	unclear as to require a court's	13	comment to that.
14	interpretation. Not the kind of thing	14	We entered into these contracts
15	you want to bank on to enforce.	15	with Commercial Risk. That is our
16	MR. HIGGINS: Well, I mean the	16	contracting party. We are entitled to
17	suggestion is that we clarify that to --	17	look to Commercial Risk, we're not -- we
18	MR. HABER: A brand --	18	don't have to look to anyone else,
19	MR. HIGGINS: -- to alleviate	19	because that's not -- no one else signed
20	those concerns.	20	that contract; Commercial Risk signed
21	But, secondly, when you're dealing	21	that contract, Commercial Risk Vermont
22	with guarantees, before you can pursue	22	and Commercial Risk Bermuda, those are
23	the parent, you have to enforce the	23	the folks that we are pursuing in this
24	obligation, to the extent you can,	24	arbitration. Frankly, these are the
25	against the guaranteee party.	25	only folks that we have a right to
	46		48
1	Proceedings - 3/28/06	1	Proceedings - 3/28/06
2	MR. HABER: It depends on the	2	pursue in this arbitration and we are
3	terms of the guaranteee. Some are	3	entitled to security from them. I don't
4	guarantees of payment, some are	4	want other guaranteees or that we may
5	guarantees of performance. It depends	5	pay, you know, the parent stands behind
6	on the guarantee you enter into and what	6	us, I don't think that that does the
7	the consideration is for the guaranteee.	7	trick. That's not who we contracted
8	It's a little difficult on the July 1	8	with.
9	'99 guarantee to understand how that was	9	THE UMPIRE: I think it's
10	consideration for the DIG contract since	10	probably -- now is probably a good time
11	it was the same date.	11	to cut off this particular line of
12	The March 9, 2001 guarantee, at	12	discussion --
13	least I don't think the panel has seen	13	MS. JACOBSON: Yeah.
14	any evidence as to what the genesis was	14	THE UMPIRE: -- (a) because I
15	for that document and what the	15	think we'll start going round again, and
16	consideration is.	16	(b) I think from a procedural viewpoint
17	I'm just saying there are a lot of	17	what we discussed earlier on is the
18	open questions and as we all well know,	18	panel will discuss the issue. It may or
19	if you give a lawyer a chance, they can	19	may not become relevant.
20	make a thousand questions out of a	20	MS. JACOBSON: Okay.
21	one-question issue. And there are	21	THE UMPIRE: If it does become
22	really a lot of questions here that are	22	relevant, we can revisit it and either
23	unanswered and I don't think the	23	make an order or ask the parties to
24	guarantee says precise -- and clearly,	24	comment some more but I think we've
25	you could clarify it by SCOR issuing a	25	probably added sufficiently enough from

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 2 the principle viewpoint other than my
 3 co-panelist who obviously doesn't agree
 4 with me.

5 MR. DIELMANN: No, I do agree with
 6 you.

7 THE UMPIRE: Good, let's move on.

8 MR. DIELMANN: No, again, I just
 9 have a very specific question. Is that
 10 correct or incorrect that, you know,
 11 Commercial Risk Vermont can -- does have
 12 under Article -- under the security
 13 clause you can take credit or not, and
 14 my question is, you know, does the
 15 contractual obligation in respect of the
 16 security requirement, does that also
 17 refer to Commercial Risk Vermont or not?

18 Because I think they only have
 19 to -- have to -- they only, you know,
 20 have to oblige if you can -- if, you
 21 know, Security of Hartford can take
 22 credit, my question is I'm not clear on
 23 this point whether that's correct or
 24 not.

25 MS. JACOBSON: I believe that

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 2 MR. DIELMANN: Okay, fine.
 3 THE UMPIRE: Maybe if we get back
 4 to the organizational meeting here for a
 5 moment at least.

6 I was incorrect at the beginning
 7 here, I moved too quickly, I should have
 8 asked everybody in the room to identify
 9 themselves, so as a break now it might
 10 be a good idea to do that.

11 I'll start here and then we'll
 12 move round to the left.

13 Obviously, David Thirkill, umpire.

14 MR. HABER: Martin Haber,
 15 party-appointed arbitrator for Security
 16 of Hartford.

17 MR. MEEHAN: James Meehan, I'm
 18 general counsel for Royal & SunAlliance
 19 USA and its affiliated insurance
 20 companies.

21 MR. LEFEBVRE: Andre Lefebvre,
 22 financial risk officer for Royal &
 23 SunAlliance USA.

24 MR. LEWNER: Andrew Lewner, from
 25 Stroock & Stroock & Lavan, for claimant.

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 2 Commercial Risk Vermont is an admitted
 3 company.

4 MR. DIELMANN: Okay.

5 MS. JACOBSON: Authorized,
 6 authorized, I'm sorry.

7 MR. DIELMANN: So as far as if
 8 there's a security obligation under the
 9 Article 14, as far as DIG is concerned
 10 and other articles of a similar nature
 11 is concerned, they wouldn't have to post
 12 letters of credit; is that correct?

13 MS. JACOBSON: That would be
 14 correct under the security provisions in
 15 the contracts, apart from common law and
 16 statute -- that's correct.

17 MR. DIELMANN: And I have another
 18 question that refers to the net funds
 19 held.

20 Net funds held --

21 THE UMPIRE: Theo, can we leave
 22 that, I was going to ask you your first
 23 question, you've asked it, but I want to
 24 get into those details when we get into
 25 the security discussion.

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 2 MS. JACOBSON: I'm Michelle
 3 Jacobson, from Stroock & Stroock &
 4 Lavan, for the claimant.

5 MR. HIGGINS: John Higgins,
 6 D'Amato & Lynch, for the respondent.

7 MS. de LACROIX: Joelle
 8 de Lacroix, CRP.

9 MR. DIELMANN: Theo Dielmann,
 10 party-appointed arbitrator for
 11 Commercial Risk Vermont and Bermuda.

12 THE UMPIRE: Thank you.

13 As far as prehearing motions are
 14 concerned, obviously we have the motion
 15 for security. Are there any other
 16 prehearing motions that anybody wants to
 17 raise at this juncture?

18 MR. HIGGINS: Which one are we on?
 19 THE UMPIRE: We're on the

20 organizational meeting?

21 MR. HIGGINS: Non-DIG.

22 THE UMPIRE: Non-DIG.

23 MR. HIGGINS: I think we should
 24 discuss the consolidation issue. Should
 25 I deal with that?

	53		55
1	Proceedings - 3/28/06	1	Proceedings - 3/28/06
2	THE UMPIRE: Please.	2	There are such disparate facts
3	MR. HIGGINS: We believe that	3	with respect to each of those programs.
4	consolidation -- not consolidation in a	4	In one we have a set of three disparate
5	literal sense because we don't have or	5	facts and DIG has its own set of facts.
6	the panel doesn't have the authority	6	We don't believe that there is that much
7	under New York or Connecticut law to	7	of a substantial overlap. I believe the
8	order parties to consolidate different	8	contention is violation of underwriting
9	contracts, so we're not asking for	9	guidelines. The guidelines are
10	consolidation in a literal sense. What	10	different in all of the arbitrations.
11	we're asking is for the panel to order	11	If what Mr. Higgins is suggesting
12	that the discovery or disclosure in the	12	is to have the DIG arbitration in
13	hearings be held at the same time. I've	13	December, as scheduled, and then have a
14	seen that in many cases but -- and	14	later date for the non-DIG, keeping them
15	that's what we're suggesting.	15	separate, that's fine with us, and we
16	Now, the objection to that, as far	16	would propose an end-of-January hearing
17	as we know, from Security is that we're	17	date if that's acceptable to the panel,
18	on a very tight schedule in the DIG	18	just splitting them up, keeping them
19	arbitration and it will interfere with	19	separate.
20	the ability to complete the schedule and	20	THE UMPIRE: Okay, let me make a
21	it will cause problems timewise for us	21	couple of points. The panel has already
22	to do that. And I think that if that's	22	chatted datewise at least, and while I
23	the case, if that's -- if there's merit	23	don't have the specific dates -- are you
24	to that argument, then we would be	24	okay?
25	willing to yield on that point so long	25	MS. JACOBSON: Yeah.
	54		56
1	Proceedings - 3/28/06	1	Proceedings - 3/28/06
2	as we don't end up doing the same thing,	2	THE UMPIRE: -- while I don't have
3	which is pushing this arbitration, the	3	the specific dates, and we can come to
4	non-DIG arbitration, along at the same	4	those in a second, the first date we
5	time as the other and, you know,	5	could offer you would be March anyway,
6	creating the same problem that's being	6	and, in effect, since we had already
7	objected to.	7	reserved the whole -- the whole week in
8	So what we would suggest, if the	8	December, I don't remember the exact
9	panel wants to entertain it, is that we	9	dates, but we reserved the whole week
10	have -- that we put this one off and	10	and I think the impression that we
11	have it done after the DIG arbitration.	11	gained when we discussed this is we'd
12	And that's perfectly acceptable to us.	12	need all of that time for the DIG
13	MS. JACOBSON: Okay. Well, we,	13	arbitration.
14	despite what Mr. Higgins is saying that	14	MS. JACOBSON: That's right.
15	he's not seeking consolidation, I think,	15	THE UMPIRE: I mean just as a
16	in fact, it would be a de facto	16	matter of fact we want to be able to
17	consolidation, which is not required	17	go --
18	either contractually, you know, in any	18	MR. HABER: December 11th.
19	of the agreements, and we don't agree to	19	THE UMPIRE: December 11th, thank
20	it and I think that's been made clear.	20	you, Marty.
21	We agree to consolidate NHE, ORS	21	We wouldn't be able to go until
22	and HPP--those were actually three	22	March anyway.
23	separate arbitrations--we agreed to	23	Talking a little more generally,
24	consolidate them into one, having --	24	and again I welcome any input from my
25	leaving us with two arbitrations.	25	co-panelists here, since the panel has

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 2 not heard from either of you relative to
 3 discovery issues in relation to the DIG
 4 contract, we assume one of two things,
 5 either you're getting along famously or
 6 you haven't chatted at all but in either
 7 case, obviously there's no issues yet
 8 before us on that. It would seem to me,
 9 as a matter of logic, that if there's
 10 auditors going in, just from an
 11 efficiency viewpoint, one would imagine
 12 that it would make sense for them to
 13 sort of look at the two or three if that
 14 was feasible but, again, if it is a
 15 problem to either of you, please go
 16 ahead and organize it as you think best
 17 and come to us with any issues as they
 18 arise.

19 As far as dates are concerned --
 20 what was that date again, Marty?

21 MR. HABER: March 26th is my
 22 earlier --

23 THE UMPIRE: Okay, that's good.
 24 I'm free -- are you free?

25 MR. DIELMANN: Yes.

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 2 be wrong because I have Easter Sunday
 3 being on March 27th in 2007, which it
 4 certainly isn't the case.

5 MR. HABER: That's a Monday.

6 THE UMPIRE: Let's put it this
 7 way, let's reserve that week.

8 MS. JACOBSON: Yes.

9 THE UMPIRE: If it so transpires
 10 there's a holiday at the end of it and
 11 we need to go over to the following week
 12 and come back, we'll do that but I think
 13 that's important that we at least get it
 14 on the calendar.

15 MS. JACOBSON: I agree with you.

16 MR. HABER: Unless you want to
 17 pick the week of April 2nd and then be
 18 sure?

19 MR. HIGGINS: That's probably
 20 better anyway because I get concerned
 21 about the suggestion of January but once
 22 this one, the DIG one is over, we're
 23 going to, you know, we're going to have
 24 to shift gears and have some time to
 25 prepare papers on the other.

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 2 THE UMPIRE: Again, do you think
 3 with the three that a week is
 4 sufficient?

5 MS. JACOBSON: I believe so.

6 THE UMPIRE: So we could reserve
 7 off -- if that was okay with you,
 8 Mr. Higgins, also, the week of 26th of
 9 March '07?

10 MR. HIGGINS: Should be okay.

11 THE UMPIRE: Is there anything
 12 strange about that --

13 MR. HABER: 26th is a Monday.

14 THE UMPIRE: -- apart from it
 15 being, the 29th being Mr. Haber's next
 16 wedding anniversary after tomorrow?

17 MS. JACOBSON: We were attempting
 18 to figure out which week it was Good
 19 Friday and I can't -- according to my
 20 list it's wrong. It must be the 23rd.

21 THE UMPIRE: The 23rd is Good
 22 Friday?

23 MS. JACOBSON: I was just trying
 24 to figure it out but apparently the
 25 schedule that I have of holidays has to

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2 THE UMPIRE: I actually have no
 3 problem if Mr. Dielmann doesn't with
 4 either of those.

5 MR. DIELMANN: No.

6 THE UMPIRE: And I don't think
 7 it's going to make that much difference.

8 MS. JACOBSON: If my notes are
 9 correct, Passover may be the following
 10 week, which is April 2nd, so we would
 11 want to do it the 26th.

12 THE UMPIRE: Okay. Did you hear
 13 that, Mr. Higgins?

14 MS. de LACROIX: I'm trying to
 15 look at his journal and it seems that
 16 he's going to a seminar in April, but I
 17 can't see anything -- I'm sorry.

18 THE UMPIRE: That's okay.

19 Let's put in the week of the 26th
 20 now and if it transpires that it's a big
 21 issue either for Easter or Passover,
 22 we'll revisit it.

23 MR. HABER: So we're at the 26th?

24 THE UMPIRE: 26th.

25 MR. HABER: Okay, done.

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 2 MR. DIELMANN: Yeah.
 3 MR. HIGGINS: So the week of the
 4 2nd, April?
 5 THE UMPIRE: No, the 26th, there's
 6 a question probably of Passover in that
 7 week.
 8 MR. LEWNER: Passover is the first
 9 two days, April 2nd and April 3rd of
 10 that year.
 11 MS. JACOBSON: We're better off in
 12 the March dates it appears.
 13 THE UMPIRE: Okay, back to the
 14 agenda, I think we're down -- could we
 15 take it that the parties would like
 16 similar procedural issues to that we
 17 discussed and agreed on in the other
 18 matter?
 19 MR. HIGGINS: Yes.
 20 MS. JACOBSON: Yes.
 21 THE UMPIRE: And ex parte
 22 communication in the same way, I think
 23 we said at the filing of the initial
 24 prehearing briefs?
 25 MS. JACOBSON: Yes.

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 2 wasn't on the agenda here. If
 3 necessary, we could revisit that one
 4 officially but if unofficially if we
 5 come to the same conclusion here, I
 6 think it will be much more efficient.
 7 MS. JACOBSON: We would request a
 8 reasoned award.
 9 MR. HIGGINS: What was that, I'm
 10 sorry?
 11 MS. JACOBSON: We request a
 12 reasoned award.
 13 MR. HIGGINS: We agree.
 14 THE UMPIRE: Okay, I don't think
 15 this particular panel is afraid of
 16 writing written awards.
 17 So if there's no other matters
 18 before this particular organizational
 19 meeting panel, we'd like to adjourn it.
 20 Do you have any other matters?
 21 MS. JACOBSON: I don't believe so.
 22 MR. HIGGINS: We don't.
 23 THE UMPIRE: So we're going --
 24 we'll adjourn the organizational meeting
 25 and take a 10-, 15-minute break?

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 2 MR. HIGGINS: Yes.
 3 THE UMPIRE: Dates and locations
 4 we've done.
 5 MS. JACOBSON: Well, we'll offer
 6 to hold -- I don't think we discussed
 7 location but we'll offer our --
 8 MR. HIGGINS: We can discuss that
 9 much later. I prefer to avoid hotel
 10 expenses and all the rest of that.
 11 MS. JACOBSON: That's why we're
 12 offering.
 13 THE UMPIRE: The panel will not
 14 insist on being in a hotel if the
 15 parties can agree on a location.
 16 MS. JACOBSON: Okay.
 17 THE UMPIRE: And, again, I think
 18 we're all agreed in New York --
 19 MR. HIGGINS: Yes.
 20 THE UMPIRE: -- as before.
 21 Please correct my memory if it's
 22 incorrect, but I don't think we actually
 23 discussed the form of award, whether you
 24 want a reasoned award or not in the
 25 other matter, and I raise it now, it

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 2 MR. HABER: 10 is fine.
 3 THE UMPIRE: 10 is fine.
 4 (Time noted: 11:12 a.m.)

1
2 C E R T I F I C A T E
3

4 I, ANDREW WALKER, a Registered
5 Professional Reporter and Notary Public,
6 do hereby certify:

7 I reported the proceedings in the
8 within-entitled matter, and that the
9 within transcript is a true record of
10 such proceedings.

11 I further certify that I am not
12 related, by blood or marriage, to any of
13 the parties in this matter and that I am
14 in no way interested in the outcome of
15 this matter.

16 IN WITNESS WHEREOF, I have
17 hereunto set my hand this _____ day
18 of _____, 2006.

19
20 ANDREW WALKER, RPR
21
22
23
24
25